IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

TUESDAY, THE 27TH FEBRUARY 2007 / 8TH PHALGUNA 1928

CRL.A.No. 2000 of 2003()

AGAINST THE JUDGEMENT/ORDER IN CRLP.520/2003 Dated 24/11/2003
CC.1074/2000 of JUDL. MAGISTRATE OF FIRST CLASS COURT, CHALAKUDY

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APPELLANT: COMPLAINANT

GOPI NAIR, AGED 70, S/O. MADHAVAN
KUNNATH HOUSE, ASHTAMICHIRA P.O.

BY ADV. SRI.SHEEJO CHACKO

RESPONDENTS: ACCUSED & STATE

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1. ANNAPURNESWARI, KODAKKOTTIL HOUSE,
ALAMATTOM DESOM, KUNDOOR P.O.

2. STATE OF KERALA, REP.BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 27/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M. JAMES, J.

Criminal Appeal No. 2000 of 2003

Dated this the 27th February, 2007.

J U D G M E N T

The complainant in C.C.No.1074/2000, on the file of the Judicial First Class Magistrate Court, Chalakudy, is the appellant. The complaint was preferred under Section 138 of the Negotiable Instruments Act. On the appointed date, there was no representation either from the complainant, or his counsel. Therefore, the court below dismissed the complaint, and acquitted the accused. Hence, this appeal on obtaining leave.

2. Counsel appearing for the appellant submits that the counsel for the complainant before the court below did not appear before the court, because of the traffic jam. Except this bald statement, there is no document or at least an affidavit filed by the counsel in that regard. Therefore, I am of the view that the submission of the counsel that he could not appear because of the traffic jam is not correct. Nevertheless, in order to save the complainant, who entrusted the matter with the counsel, I am of the

view that an opportunity be given to the complainant, particularly, when the accused did not appear, inspite of non-bailable warrant issued against him, by the court below.

3. In such circumstances, I set aside the impugned Order, dated 2.5.2003, and restore C.C.No.1074/2000, to the file of the Judicial First Class Magistrate Court, Chalakudy.

4. The complainant shall appear before the court below on 22.3.2007, at 11 a.m.

5. The learned Magistrate shall proceed with the matter against the first respondent, accused, from the stage at which the complaint was dismissed, on the appointed date. The matter shall be disposed of, at the earliest, and in any case, within three months from the date of appearance/production of the accused.

Criminal Appeal is allowed as above.

J.M. JAMES,
JUDGE

nj.